

PUBLIC INTEREST OBLIGATIONS AND THE DIGITAL TELEVISION AGE

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PREAMBLE

How should the “public interest, convenience, and necessity” be served by broadcasters? The government has allowed the nation’s broadcasters to use at no cost the enormous power, potential and capacity of the publicly-owned analog and digital spectrum estimated to be worth hundreds of billions of dollars. In return, the public expects – and our democracy requires – the Federal Communications Commission (FCC) to define meaningful public interest requirements so that this grant of spectrum will benefit not only broadcasters, but also our national and local communities.

As the age of digital television dawns, the FCC has a fresh opportunity to create meaningful public interest obligations for broadcasters. One core component of these public interest requirements is that broadcasters provide opportunities for citizens to become informed about – and involved in – local civic affairs and elections. Another is to use digital broadcasting’s enormously increased capacity to expand the diversity of viewpoints and voices available to the American public over its airwaves. In addition to the specific proposals below, we recognize that the public interest also requires that broadcasters air programming that serves the educational needs of children, Americans with Disabilities (i.e., closed captioning, video description, digital features that would provide for more access), and underserved communities, and generally promote local and community programming.

To assure that broadcasters are adequately serving the public interest, they should be obligated to report to the public on an ongoing basis if and how they are fulfilling these requirements. Ensuring that the grantees of the public’s extraordinarily valuable spectrum adequately serve the public interest appropriately balances First Amendment interests and guarantees that the age of digital television will benefit both broadcasters and the American public.

PUBLIC INTEREST OBLIGATIONS – PROPOSED PROCESSING GUIDELINES

The following is a processing guideline for the general public interest portion of broadcast license renewal applications. Licensees that meet all four of the following guidelines will receive staff level approval of the general public interest portion of their license renewal application; applications of licensees not meeting all of the following guidelines will be referred to the Commission for review. In addition, any viewer may file a complaint with the Enforcement Bureau alleging that the licensee has failed to comply with the terms of this processing guideline. If, on the basis of viewer complaints or staff review, the staff determines that the licensee consistently falls significantly below the minima set forth here, the staff shall have the authority to direct the early filing of license renewal applications or take other enforcement measures as may be appropriate.

1. Local Civic and Electoral Affairs Programming Requirements

To receive staff level approval, a licensee shall air a minimum of three (3) hours per week of qualifying local civic or electoral affairs programming on the most-watched (primary) channel they control/operate. The primary channel means the FCC-required free over-the-air standard channel which, like its analog predecessor, provides entertainment, sports, local and national news, election results, weather advisories, access for candidates and public interest programming such as educational programming for children (see FCC's Fifth Report and Order on DTV).

In addition, to the degree that a licensee multicasts additional free over the-the-air programming streams, the licensee must air an amount of qualifying local civic or electoral affairs programming on those channels equal to three hours per week per channel or three percent of the aggregate number of hours broadcast between the hours of 7:00 a.m. and 11:35 p.m. per week, whichever is less.

Licensees shall have the flexibility to decide how to allocate their local civic and electoral affairs programming among their various non-primary channels; for example, a licensee may decide to run most of its non-primary channel local civic and electoral affairs programming on one designated local news or public affairs channel.

Qualifying Programming

Qualifying programming must meet the definition of either local civic programming or local electoral affairs programming.

Local civic programming is designed to provide the public with information about local issues. Local civic programming includes broadcasts of interviews with or statements by elected or appointed officials and relevant policy experts on issues of importance to the community, government meetings, legislative sessions, conferences featuring elected officials, and substantive discussions of civic issues of interest to local communities or groups.

Local electoral affairs programming consists of candidate-centered discourse focusing on the local, state and United States Congressional races for offices to be elected by a constituency within the licensee's broadcast area. Local electoral affairs programming includes broadcasts of candidate debates, interviews, or statements, as well as substantive discussions of ballot measures that will be put before the voters in a forthcoming election. Programming that focuses on the "horserace" aspects of an election does not qualify as local electoral affairs programming. Programming that is primarily concerned with the political strength or viability of a candidate or ballot issue; that focuses on a candidate or ballot issue's status in relation to polling data, endorsements or fundraising totals; or discusses an election in terms of who is winning or losing is considered "horserace."

Exclusions from Local Civic or Electoral Affairs Programming

Public service announcements and paid political advertisements do not qualify as local civic or electoral affairs programming.

Additional Qualification Requirements

Local civic and electoral affairs programming must meet the following qualification requirements in order to be counted towards the three hour/three percent minimum:

- It must be aired between 7:00 a.m. and 11:35 p.m. with at least 50 percent of that programming being aired between 5:00 p.m. and 11:35 p.m.
- At least 75 percent of the required minimum must be "first-run programming" by the licensee.
- A licensee holding multiple licenses within the same area (as defined by the Commission's rules permitting multiple ownership) may not fulfill its requirements by duplicating original "first run" programming on its stations. Each station licensed within a market must fulfill the public interest guidelines by providing the public with a unique perspective.
- To the extent that a licensee utilizes such distribution and promotion mechanisms as personal video recorders (PVRs), video-on-demand (VOD), and electronic program guides (EPGs), local civic and electoral affairs programming must be made available and promoted using these and other utilized interactive technologies.
- It must be identified and documented as local civic or electoral affairs programming, and this information must be made available in the licensee's public file and website.

Qualifying Newscasts

Programming aired during regularly scheduled newscasts on the primary channel that otherwise meets the definition of qualifying local civic or electoral affairs programming may be counted towards the licensee's weekly minimum, up to 30 minutes per week.

Special Considerations Governing the Periods Prior to Elections

In the six (6) weeks prior to a general election for federal, state and/or local public office, at least two hours of the three hour minimum shall be local electoral affairs programming, aired between the hours of 5:00 p.m. and 11:35 p.m. on the licensee's primary channel.

2. Independently Produced Programming

To receive staff level approval, a licensee that is an affiliate of a national television network (ABC, CBS, NBC, FOX, UPN, and WB) shall air independently produced programming for at least 25 percent of the primary channel's prime time schedule.

Independent programming must be produced by an entity not owned or controlled by an owner of a national television network. If an owner of a national television network owns or controls more than a one-third financial interest in the program, acts as the distributor of such program in syndication, or owns the copyright in such program, the owner of a national television network will be considered to be the producer of that program for the purposes of this processing guideline.

To further the public interest in diversity of viewpoints and localism, licensees are encouraged to program on their non-primary digital channels additional independently produced programming, including locally produced independent programming.

Programming that meets the definition of local civic or electoral affairs programming shall not be included as either network or independently produced programming in this calculation.

3. Reporting

To receive staff level approval, a licensee shall certify that at the end of each quarter during the preceding license term, it placed on its station website (if it has one) and in its public file, a report identifying any programming that counts toward fulfillment of the processing guideline. The report shall contain the following information for each program or program segment:

- For local civic programming, the specific local issues addressed. For electoral affairs programming, identify the race and the name(s) of the candidate(s) or the ballot issue(s)
- Program format, e.g., local news segment, talk show, documentary
- Date and time aired
- Channel on which it was aired
- Whether the programming was locally produced
- Description of any interactive functions utilized
- Description of how the program was promoted to the public
- Efforts made to ensure the public was exposed to diverse viewpoints on the issue or election

4. Excessive Commercialization

The staff shall not have authority to act upon, and shall refer to the Commission, any application for renewal which demonstrates that the licensee has devoted in excess of 50% of its daily programming to material which consists of the transmission of sales presentations or program length commercials.